Appendix A

United States Court of Appeals
for the Ninth Circuit

No. 21,267

Yick Chin,
Petitioner,
vs.
Immigration and Naturalization Service,
Respondent.

[November 28, 1967]

On Petition to Review an Order of the Immigration and Naturalization Service

Before: Chambers, Pope and Merrill, Circuit Judges

Per Curiam:

Petitioner seeks review by this court under § 106(a) of the Immigration and Nationality Act, 8 U.S.C. § 1105a(a), of a ruling of the Board of Immigration Appeals denying him suspension of deportation and adjustment of status under § 244(a) of the Act, 8 U.S.C. § 1254(a).

Respondent has moved to dismiss the petition for lack of jurisdiction on the ground that the order

sought to be reviewed is not one of those "final orders of deportation * * * pursuant to administrative proceedings under section 242(b) of this Act," over which § 106(a) gives this court initial review.

The motion has merit.

Petitioner, a native of China, sought entry to the United States in 1952. He was denied entry but was paroled into the United States, where he has remained ever since. No proceedings to effect his deportation have been brought under § 242(b) of the Act, 8 U.S.C. § 1252(b). In 1966 he made application on his own initiative for discretionary relief under § 244(a), and it is the order denying him that relief which he now seeks to have reviewed.

The order, not having been entered in the course of § 242(b) deportation proceedings, is not ancillary to such proceedings and hence is not reviewable under § 106(a). *Yamada v. I&NS*, ... F.2d ..... (9th Cir. Oct. 17, 1967).

Accordingly the petition for review is dismissed for want of jurisdiction.

Appendix B

United States Court of Appeals
for the Ninth Circuit

No. 21,267

Yick Chin,
Petitioner,
vs.
Immigration and Naturalization Service,
Respondent.

JUDGMENT

Upon Petition to Review an order of the Immigration and Naturalization Service.

This Cause came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the petition to review in this Cause be, and hereby is, dismissed for want of jurisdiction.

Filed and entered: November 28, 1967.

Appendix C

United States Department of Justice
Board of Immigration Appeals

July 15, 1966

File: A-10844478—Los Angeles

In re: Chin, Yick

In Exclusion Proceedings

Motion

On Behalf of Appellant: Jackson & Hertogs, Esqs.
580 Washington Street
San Francisco, Calif.
94111

On Behalf of I&N Service: William S. Howell, Esq.
Trial Attorney
(Brief filed)

Excludable: Act of 1924—no immigration visa
E. O. 8766—No passport

Application: Motion to reopen to file application for suspension of deportation

An order entered by the Board of Immigration Appeals in this case on August 18, 1952 dismissed the applicant's appeal from a decision entered by a Board of Special Inquiry denying his application for admission as a citizen of the United States. He was thereafter paroled into the United States and has remained in that status for approximately 14 years.

The applicant now moves this Board to reopen the exclusion proceedings for the purpose of permitting an application for relief under the provisions of Section 244 of the Immigration and Nationality Act, as amended by the Act of October 3, 1965 (P.L. 89-236).

The applicant is a native and citizen of China. He entered the United States at the port of San Francisco, California on April 6, 1952.

It is alleged in the motion that the applicant now appears eligible to submit an application for relief under provisions of Section 244 of the Immigration and Nationality Act, as amended.

By its very terms Section 244(a) and succeeding paragraphs relate only to resident aliens who have been arrested in deportation proceedings. An excluded alien who has been paroled into the United States is not a resident. *Kaplan v. Tod,* 267 U.S. 229 (1925). 8 CFR 242.17 provides no procedure for suspension of deportation in the case of aliens who are under exclusion proceedings. Cf. *Matter of E-,* 3 I&N Dec. 541 B.I.A. March 18, 1949.

The motion will be denied.

Order: It is directed that the motion be and the same is hereby denied.

Acting Chairman